STATE OF MICHIGAN

COURT OF APPEALS

MEGAN E. CARNEY,

Plaintiff-Appellant,

v

DAVID G. CARNEY,

Defendant-Appellee.

UNPUBLISHED
March 30, 2001

No. 227461
Calhoun Circuit Court
LC No. 98-002285-DM

Before: Wilder, P.J., and Hood and Cavanagh, JJ.

PER CURIAM.

Plaintiff appeals as of right from the trial court's order granting defendant joint physical and legal custody of her minor daughter under the doctrine of equitable parenthood. We affirm.

All custody orders must be affirmed on appeal unless the trial court's findings were against the great weight of the evidence, the court committed a palpable abuse of discretion, or the court made a clear legal error on a major issue. *Mixon v Mixon*, 237 Mich App 159, 162; 602 NW2d 406 (1999). Plaintiff first asserts that an award of equitable parent status to defendant was inappropriate because the three part test set forth in *Atkinson v Atkinson*, 160 Mich App 601; 408 NW2d 516 (1987), was not met. The relevant language from *Atkinson*, adopting the equitable parent doctrine in Michigan, is:

> [We] find that a husband who is not the biological father of a child born or conceived during the marriage may be considered the natural father of that child where (1) the husband and the child mutually acknowledge a relationship as father and child, or the mother of the child has cooperated in the development of such a relationship over a period of time prior to the filing of the complaint for divorce, (2) the husband desires to have the rights afforded to a parent, and (3) the husband is willing to take on the responsibility of paying child support. [*Id*. at 608-609.]

Plaintiff concedes the first prong of the *Atkinson* test was satisfied because plaintiff cooperated in the development of a father/daughter relationship between defendant and the child. However, plaintiff challenges the satisfaction of the two remaining prongs of the test.

This Court agrees with the trial court's finding that the second and third prongs of the *Atkinson* test were met. Defendant was present at the child's birth, signed the child's birth

certificate, and raised the child as his own. The child knew no other father. Plaintiff admitted she had no objection to defendant being in the child's life unless the child's biological father was located and assumed a role in the child's life. Defendant visited the child every other weekend and every Tuesday after the parties' divorce. The evidence illustrated that defendant had paid child support in compliance with friend of the court recommendations and the order modifying judgment of divorce. Despite the isolated incident in which defendant apparently left the child with her mother, these facts persuade us that defendant desired to have the rights afforded to a parent and was willing to, and did, pay child support. Consequently, the second and third prongs of *Atkinson* were satisfied. Under the facts of the case, defendant was properly awarded equitable parent status.

Plaintiff further argues that the trial court's award of joint custody was not in the child's best interest. See MCL 722.23; MSA 25.312(3). We disagree. Plaintiff correctly notes that custody disputes are to be resolved in the child's best interest, as measured by the factors set forth in MCL 722.23; MSA 25.312(3). However, contrary to plaintiff 's contention, we find the evidence of record to be sufficient on these factors.

The trial court held that the "best interest" of the child required that her relationship with defendant be allowed to continue. The trial court's decision was based on the facts set forth above as well as other considerations, including that defendant took care of all three children for approximately a year before the incident in which he apparently returned the child to her mother. We concur with the trial court that the facts of this case support the application of the equitable parent doctrine so as to serve the child's "best interest."

Plaintiff next argues that the trial court erred in failing to make specific findings regarding each of the "best interest" factors in determining custody. We disagree.

Generally, the trial court must consider and explicitly state its findings and conclusions regarding each "best interest" factor and the failure to do so is usually error warranting reversal. *McCain v McCain*, 229 Mich App 123, 124; 580 NW2d 485 (1998). However, a court's acceptance of the parties' agreement as to custody implicitly determines that the agreed upon arrangement is in the child's best interest. *Koron v Melendy*, 207 Mich App 188, 191; 523 NW2d 870 (1994). At trial plaintiff sought a permanent custody order consistent with the specific custody arrangements agreed upon by the parties and included in the temporary custody order. Consequently, we find the trial court's failure to specifically acknowledge the statutory best interest factors is not error warranting reversal.

Plaintiff next argues that the trial court misunderstood the equitable parent doctrine and, as a result, awarded defendant nothing more than third party status. We disagree. Contrary to plaintiff 's assertion, the court's award of equitable parent status is clearly delineated by the order and is not made contingent or revocable on the basis of future proceedings. While the court did express a willingness to review the custody provisions contained in the judgment of divorce should "proper proceedings" result in the award of additional rights to either a biological or adoptive father, there is no indication the court erroneously concluded it could revoke or otherwise alter the equitable parent *status* granted defendant in that judgment. Therefore, we find no error in the court's award of equitable parent status to defendant.

Finally, plaintiff argues that an award of custody to defendant is an unconstitutional intrusion into the natural parent-child relationship. We disagree. Plaintiff's argument is premised on the erroneous assumption that the trial court granted defendant contingent and/or revocable equitable parent status. However, as discussed *supra*, plaintiff's argument is without merit.

Plaintiff further argues that the judicially created equitable parent doctrine is unconstitutional. Plaintiff asserts that, in light of the comprehensive framework of the Child Custody Act, MCL 722.21 *et seq*.; MSA 25.312(1) *et seq*., the creation of the equitable parent doctrine was an improper appropriation of legislative power by the judiciary, i.e., a violation of the separation of powers doctrine. However, plaintiff does not provide any discussion of the applicable legal principles supporting her challenge. Generally, such failure to adequately brief the merits of an allegation will result in a determination that the issue has been abandoned on appeal. See *Prince v MacDonald*, 237 Mich App 186, 197; 602 NW2d 834 (1999). Nonetheless, the equitable parent doctrine has been routinely applied by this Court. See e.g., *Bergan v Bergan*, 226 Mich App 183; 572 NW2d 272 (1997); *York*, *supra*. Consequently, this Court is obligated to recognize the validity of the doctrine until otherwise directed by our Supreme Court. See MCR 7.215(H)(1).

Affirmed.

/s/ Harold Hood
/s/ Mark J. Cavanagh